

Kluwer Arbitration Blog

A Note to in House Lawyers: When Do You Appoint a Law Firm for an Arbitration?

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Firms will often write that for effective representation it is best to engage law firms at an early stage in the dispute process. Whilst there may be some merit in this, it may not necessarily be entirely true. It is evident that in-house roles are not what they were initially thought to be. In house lawyers today are expected to do more than just ‘manage’ the dispute. The result: it is possible for some cases to be managed entirely in house and/ or for law firms to be involved at a later stage. So how does the in house lawyer decide when the time is ripe to get external counsel. Below are four (4) points that the in house lawyer should consider when deciding to get an external law firm on board.

1. Complexity and value of the dispute

It is true some disputes are more complex than others. In complex disputes, for example high profile shareholder disputes or construction disputes involving public works or infrastructure projects, it is preferred for a law firm to be on board at an early stage. This is because if your company is filing an arbitration for recovery of outstanding sums and the matter is relatively complex it may be fitting to have a firm on board before you file the case to determine if there is a case and the position of the company. Such a strategy would assist the company in saving costs.

If the case involves a subject matter outside the realm of the in house lawyer’s experience, then the in house lawyer is better suited to refer the dispute to the law firm from the outset.

The claim amount also plays a key role. Complexity is often associated with the value, and shareholders and board members with their commercial sense often associate the two together. In house lawyers are often persuaded to appoint law firms for high value disputes irrespective of complexity to play safe and ensure senior management is comfortable with the dispute management.

2. Cost

Some cases simply do not justify the cost of external counsel. As an in house lawyer, remember you yourself are a cost to the company. Therefore, you would best be served to come up with ways of reducing the company’s costs by internal dispute management, subject to your team’s capacity as opposed to outsourcing the matter. This is especially true if the dispute is relatively less complex and the value of the case is low. For such cases, in house lawyers should assess the strengths and

weaknesses of their company's position and suitably advise top management on the next steps. It may be that such cases are better off being settled particularly if the case has been filed against the company.

3. Time

Depending on your capacity, it might not be possible to handle the entire arbitration process especially if it is anticipated that lengthy pleadings will be involved. In such cases, in house counsel can work on the case at the initial stage that is can draft and submit the Request for Arbitration or Reply to the RFA as the case may be, and appoint arbitrators. At times, particularly if you are the respondent, the company may best be served for the in house lawyer to draft and respond to the submissions, because he is likely to be most familiar with the facts and the commercial goings-on of the company.

4. It's your job to prepare your law firm

At the end of the day, some disputes by their very nature will require a firm to be pulled on board at the onset or after the initial submissions. For effective case management, it is the in house lawyer's job to ensure the firm has all the documents and information it needs to prepare the case. It cannot be stressed enough that communication channels be open. In house lawyers will be benefited from preparing full factual and evidentiary briefs for their firms. This is because in house lawyers are best placed to gather all the information and relevant documents and collate them for the firm. This in turn reduces costs such as law firm billing hours and prevents wasting of time in the firm sending requests for information and the in house lawyer responding to their queries.

At the end of the day, it all depends on whether the ends justify the means. It's a matter of cost, time and efficiently running the dispute to obtain a favourable outcome. Regardless, of when the law firm is involved, the in house lawyer is responsible for feeding the law firm with information in as much a collated a manner to achieve the desired results – cost efficiency and possible triumph.

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